Supreme Court, U.S.
FILED

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NO._____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

DOUGLAS NELSON CARLISLE,

Petitioner,

VS.

LARRY ROBINETT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHETHER THE TEXAS COURT DECISIONS INTERPRETING OBJECTIVE REASONABLENESS OF THE POLICE OFFICER'S CONDUCT INVOLVE QUESTIONS OF SUBSTANCE THAT APPEAR INCONSISTENT WITH PRIOR RULINGS OF THIS COURT.

II. WHETHER THE TEXAS COURT DECISIONS ERRED IN FAILING TO DETERMINE THE SUFFICIENCY OF THE SEARCH WARRENT IN ASSESSING THE OBJECTIVE REASONABLENESS OF THE POLICE OFFICER'S ENTRY INTO THE RESIDENCE AND USE OF DEADLY FORCE.

III. WHETHER THE TEXAS COURT DECISIONS ERRED IN REVERSING THE TRIAL COURT'S DENIAL OF SUMMARY JUDGMENT BECAUSE THE POLICE OFFICER FAILED TO CONCLUSIVELY ESTABLISH THAT A NO-KNOCK ENTRY OF THE RESIDENCE WAS OBJECTIVELY REASONABLE.

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Petitioner, Douglas Nelson Carlisle

Respondent, Larry Robinett

Others: The City of Wichita Falls, Texas

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PETITION FOR A WRIT OF CERTIORARI

Petitioner herein respectfully prays that a writ of certiorari issue to review a final judgment of the Texas Supreme Court entered in this action on December 13, 1996.

OPINIONS BELOW

The decision of the district court is not reported.

The decision of the Court of Appeals is reported at 928 S.W.2d 623 (Tex. App. - Fort Worth 1996).

The decision of the Supreme Court of Texas is not reported.

All decisions are contained in the attached Appendix.

BASIS FOR JURISDICTION

The final judgment of the Texas Supreme Court was entered on December 13, 1996. This Court has jurisdiction to review the final judgment of the Texas Supreme Court pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983

STATEMENT OF THE CASE

(i) STATEMENT OF FACTS.

For ease of identification the following will be used throughout this petition:

Petitioner will be called Carlisle.

Respondent will be called Robinett.

This is a civil rights action filed under 42 U.S.C. § 1983, in state court. Carlisle alleged that Robinett, a Police Officer for the City of Wichita Falls, Texas, violated Carlisle's constitutional rights to be free from excessive use of force, and unreasonable arrests and searches when Robinett critically wounded Carlisle during a no-knock and announce execution of a combination search and arrest warrant for the premises where Carlisle was baby-sitting a young girl.

(ii) COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW.

This case was filed on January 30, 1995.

Robinett moved for summary judgment based on qualified or official immunity.

The trial court denied Robinett's Motion for Summary Judgment, whereupon Robinett took an immediate interlocutory appeal from the denial of immunity pursuant to the provisions of Tex. Civ. Prac. & Rem Code Ann. § 51.014(5) to the Court of Appeals for the Second District of Texas at Fort Worth. The Court of Appeals reversed the trial court's denial of summary judgment and rendered judgment in favor of Robinett based on an assertion of immunity in a decision rendered June 27, 1996, that was not original designated for publication. Carlisle timely filed a Motion for Rehearing in the Court of Appeals which was overruled without a written opinion on August 15, 1996, at which time the Court of Appeals ordered its June 27, 1996, opinion to be published after reconsideration. Carlisle timely filed his Application for Writ of Error with the Supreme Court of Texas. On December 13, 1996, the Supreme Court of Texas denied the Application for Writ of Error with the notation "Writ Denied." No request for rehearing was made.

REASONS FOR GRANTING THE WRIT

I. The present case involves interpretation of federal substantive law. The decision to grant official immunity to the police officer conflicts with applicable decisions of this Court.

II. Factually this case has significant similarities to the abuses present in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). The nature of the abuse of civil rights was so egregious in *Bivens* that this court created what has since been known as a *Bivens* action. In this case the purported search warrant is clearly insufficient as a matter of law. In addition laws in place to require an officer to knock prior to breaking down the door of a residence were ignored based on the admitted "custom" of the police to ignore these laws.

ARGUMENT AND AUTHORITIES

Standard of Review

Procedurally this case is governed by Texas Law. In order to prevail on his Motion for Summary Judgment, Robinett was required to prove that there was no genuine issue as to any material fact and that he was entitled to judgment as a matter of law. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548 (Tex. 1985). When the Texas courts review a summary judgment, they accept as true all evidence favoring the nonmovant, indulging every reasonable inference and resolving all doubts in the nonmovant's favor. *Nixon, supra*. Under the facts of this case, Robinett was entitled to summary judgment only if he conclusively established all of the elements of his affirmative defense of qualified or official immunity. *Johnson County Sheriff's Posse, Inc. v. Endsley*, 926 S.W.2d 284 (Tex. 1996)

The sufficiency of the summary judgment evidence:

Official or qualified immunity is an affirmative defense, and as such, the burden is on the defendant to establish all its elements. Government employees are entitled to official immunity from suits arising from the performance of their (1) discretionary duties while acting in (2) good faith as long as they are (3) within the scope of their authority. *City of Lancaster v. Chambers*, 883 S.W.2d 650 (Tex. 1994) It is undisputed that Robinett was acting within his discretion and within the scope of his official capacity. The issue present on appeal involves whether the summary judgment evidence established that Robinett was acting in good faith. In *Chambers, supra*, the Texas Supreme Court adopted the federal standard of "objective reasonableness" in determining good faith in the area of civil rights violations by police officers. The Court stated, "the test is one of objective legal reasonableness, without regard to whether the government official involved acted with subjective good faith. '[W]e look to whether a

reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official at the time the conduct occurred.'" The evidence supporting Robinett's motion for partial summary judgment failed to satisfy the good faith standard established in *Chambers* and the federal case law elaborating on objective reasonableness. Robinett's affidavits do not recite that he reasonable believed that the combination search and arrest warrant in question was valid. The affidavits merely recite, "I believe I had probable cause to search the residence located 2142 Avenue E, Wichita Falls, Texas." Robinett did not swear that he read the search warrant and the underlying affidavit that the search warrant incorporated. An officer cannot manifest objective good faith by relying on a warrant based on an affidavit so lacking in *indicia* of probable cause, as is the underlying affidavit in this case, as to render official belief in its existence entirely unreasonable. *United States v. Leon*, 468 U.S. 897 at 923, 104 S.Ct. 3405, 82 L.Ed.2d

677 (1984) In footnote number 24 of this Court's opinion in *Leon*, the Court stated "it is necessary to consider the objective reasonableness, not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination. Nothing in our opinion suggests, for example, that an officer could obtain a warrant on the basis of a 'bare bones' affidavit and then rely on colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search."

Robinett's affidavits fail to satisfy the good faith standard established in *Chambers, supra*, because they are purely subjective statements of good faith and do not recite that his actions were according to an objective standard of what a reasonably prudent officer could have believed under the same or similar circumstances. Neither or Robinett's affidavits state whether a reasonably prudent officer under the

same or similar circumstances could have believed that Robinett's actions were justified.

The affidavit of Curtis Harrelson, Chief of Police of the City of Wichita Falls, was not based upon either established law or the information possessed by Robinett at the time of the shooting and is not sufficient to establish the officer's good faith.

The insufficiency of the combination search and arrest warrant:

Carlisle claimed that Robinett made an illegal, no-knock entry (i.e., without first knocking and identifying himself stating his purpose for demanding entry and allowing the occupants time to open the door) before Robinett forcibly entered the residence under the auspices of an insufficient bare bones affidavit so lacking in *indicia* of probable cause as to render an official's good faith belief in its existence entirely unreasonable so that Robinett could not manifest objective good faith reliance on the warrant issued on the basis thereof [citing *United States v. Leon*, 468 U.S. 897 at 923, 104 S.Ct. 3405, 82

L.Ed.2d 677 (1984)] and thereafter used excessive deadly force against him.

The combination search and arrest warrant and the supporting affidavit in this case does not contain any reference to Carlisle or any information which would constitute probable cause that he possessed marijuana. Furthermore, the affidavit does not allege that Carlisle was in charge of and controlled the residence in question. Rather, the affidavit recited that the premises were in charge of and controlled by "A male suspect known to affiant only as Travis." The warrant only authorized the officers to arrest and bring before the magistrate each suspected party named in the affidavit.

The first affidavit of Robinett attached to his Motion for Summary Judgment states: "As I scanned the room with my flashlight, I observed Carlisle lying face up on a couch. I was wearing a uniform with 'POLICE' emblazoned on both the front and back of my jacket. I shouted 'police' and ordered Carlisle to 'get down on the floor.' Carlisle raised up from the couch, pointed a handgun directly at my chest and then cocked the

trigger. In reasonable fear of my life, I backed away and began firing in self defense. I was successful in disabling Carlisle and preventing return fire, thus saving my own life. Plaintiff Carlisle was shot four times by me." The warrant did not specifically authorize Carlisle's arrest. Carlisle's mere presence on the premises at the time of the execution of the warrant did not authorize his detention. *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed 2d 238 (1978)

The warrant to search for contraband was not founded on probable cause. Thus, for Fourth Amendment purposes the warrant did not implicitly carry with it the limited authority to detain Carlisle as an occupant of the premises while a proper search was conducted. *Michigan v. Summers*, 452 U.S. 692 at 705, 101 S.Ct. 2587, 69 L.Ed.2d at 351 (1981)

The no-knock entry problem and how it conflicts with decisions of this court:

The requirement that law enforcement officials executing a search warrant on a person's home first knock and identify themselves, state their purpose for demanding entry

and allow the occupants time to open the door before forcibly entering has deep rooted common law origins that extended far beyond the adoption of the constitution. *United States v. Shugart*, 889 F.Supp. 963 (E.D. Tex 1995) Although Robinett argued that no-knock entry in question was justified, Robinett presented no evidence that the officers executing the search warrant for the residence had reason to believe that anyone inside the residence knew of the officers presence or their purpose and thus were likely to be in the process of destroying evidence. There was no evidence that anyone inside the residence had made arrangements to dispose of evidence in the event of a police raid. Instead, Robinett relies on Officer Burt's generalized concern that evidence might have been destroyed if they had announced their presence and purpose before entering the residence in question. Such generic concerns, however, exist in almost every case involving a search for drugs. If such concerns were sufficient to abate the necessity to comply with the "knock and announce" rule, officers would be excused from the rule in almost every

situation where they executed a drug related search warrant on a citizen's residence, since most narcotics are kept in readily disposable quantities and most homes are furnished with plumbing facilities which could be used to eliminate the presence of the drugs. *Shugart, supra*.

In *Wilson v. Arkansas*, 514 U.S. _____, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), this Court held that the common law knock and announce principle forms a part of the reasonableness inquiry under the Fourth Amendment but remanded the case to the Arkansas Supreme Court to allow the State court to make any necessary findings of facts and to make the determination of the reasonableness and the necessary justification for the unannounced entry in that case. Presumably, the trial court found that Robinett failed to justify his no-knock entry in assessing Robinett's good faith relative to his assertion of qualified immunity.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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NO. 144,034-C

DOUGLAS NELSON CARLISLE, Plaintiff,	§	THE 89TH DISTRICT COURT
VS.	§	OF
CITY OF WICHITA FALLS, AND OFFICER LARRY ROBINETT, Defendants.	§	WICHITA COUNTY, TEXAS

ORDER

Defendant Larry Robinett's motion for partial summary judgment on the basis of qualified immunity came on for hearing. After considering the pleadings, the motion, the response, the evidence (including plaintiff's supplemental response to defendants' motion for summary judgment and the supplemental affidavit of Larry Robinett), and argument of counsel.

It is therefore ORDERED that defendant Larry Robinett's motion for partial summary judgment is denied.

SIGNED this 12 day of February, 1996.

Juanita Pavlick
Judge Presiding

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORTWORTH

NO. 2-96-074-CV

LARRY ROBINETT
APPELLANT

VS.

DOUGLAS NELSON CARLISLE
APPELLEE

FROM THE 89TH DISTRICT COURT OF WICHITA COUNTY

OPINION

This interlocutory appeal stems from a civil rights action filed under 42 U.S.C. Sec. 1983 (1994) by Douglas Carlisle.[1] Appellant Larry Robinett challenges trial court's denial of a partial summary judgment based upon his

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[1] State courts have concurrent jurisdiction over cases brought under the provisions of section 1983. See Martinez v. California, 444 U.S. 277, 283, 100 S. Ct. 553, 558, 62 L. Ed. 2d 481, 488 (1980). This court has previously held that a suit for damages comes within the provisions of section 1983. See Texas Educ. Agency v. Leeper, 843 S.W. 2d 41, 48

assertion of qualified immunity. Because we find that partial summary judgment was improperly denied, we reverse the order of the trial court and render summary judgment for Robinett based on his qualified immunity.

BACKGROUND

Robinett is a police officer in Wichita Falls, Texas. During the early morning hours of January 29, 1993, he and other officers with the North Texas Drug Enforcement Task Force executed a search warrant for illegal drugs at 2142 Avenue E in Wichita Falls. The officers believed that the suspects inside the residence could be armed and dangerous.

The police officers announced their presence and used a battering ram to knock the front door down after they were denied entry to the house. Robinett was the first officer to enter the house and was followed by Officer Albert Chapa. Robinett, wearing a uniform with the word

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(Tex. App.—Fort Worth 1991), rev'd in part on other grounds, 893 S.W.2d 432 (Tex. 1994).

"POLICE" emblazoned on the front and back of it, carried a flashlight in one hand and his gun in the other one.

As Robinett scanned the darkened room with his flashlight, he saw Carlisle lying face-up on a couch. Robinett shouted "Police" and ordered Carlisle to get down onto the floor. Carlisle did not get on the floor and, instead, pointed a handgun at Robinett's chest. Robinett began firing in self-defense and shot Carlisle four times. Carlisle was taken to Wichita General Hospital and has since been convicted of aggravated assault on a peace officer and illegal possession of a firearm by a felon.

Carlisle sued Robinett, claiming that Robinett used excessive and unreasonable force. Robinett moved for partial summary judgment, asserting qualified immunity. Carlisle responded that Robinett entered the residence illegally and failed to identify himself as a police officer before using deadly force. Partial summary judgment was denied based on state law.

POINT OF ERROR ONE

In his first point of error, Robinett claims the trial court erred in applying state, rather that federal, law. Carlisle sued Robinett under section 1983, claiming that the officer violated his federal civil rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Robinett asserted the defense of qualified immunity and relied upon federal law in his motion for partial summary judgment. However, the trial court apparently relied upon state law in denying partial summary judgment, noting in a letter to counsel that Carlisle "presented sufficient . . . evidence to controvert the element of 'good faith' required to establish . . . qualified immunity."

The "good faith" element is a component for the affirmative defense of qualified immunity under state law. City of Lancaster v. Chambers, 883 S.W.2d 650 (Tex. 1994). Federal law governs this case. Borough of West Mifflin v. Lancaster, 45 F.3d 780, 790 (3rd Cir. 1995); USX Corp. v. Champlin, 992 F.2d 1380, 1385 (5th Cir. 1993);

Reese v. Anderson, 926 F.2d 494, 500 (5th Cir. 1991). Robinett's assertion of qualified immunity should have been evaluated under federal, and not state, law. Accordingly, point of error one is sustained.[2]

POINT OF ERROR THREE

Robinett further contends he was entitled to qualified immunity based on federal law. Robinett had been warned that the suspects inside the house could be armed and dangerous and he entered the house pursuant to a search warrant. Police officers executing the warrant identified themselves as such while attempting to enter the premises. Robinett was wearing a jacket with "POLICE" printed on the front and back of the jacket. Although he ordered Carlisle onto the floor, Carlisle pointed a gun at Robinett's chest. In a summary judgment case, the issue on appeal is whether the movant met his summary judgment burden by establishing that no genuine issue of material fact exists

[2] In his second point of error, Robinett claims that the trial court erred in denying his motion for partial summary judgment because he is entitled to qualified immunity under state law. Because our analysis of points of

and that movant is entitled to judgment as a matter of law. See TEX. R CIV. P. 166a(c); Cate v. Dover Corp., 790 S.W.2d 559, 562 (Tex. 1990); City of Houston v. Clear Creek Basin Auth., 589 S.W.2d 671, 678 (Tex. 1979). The burden of proof is on the movant, Acker v. Texas Water Comm'n, 790 S.W.2d 299, 301-02 (Tex. 1990), and all doubts about the existence of a genuine issue of a material fact are resolved against movant. Cate, 790 S.W.2d at 562; Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co., 391 S.W.2d 41, 47 (Tex. 1965). Therefore, we must view the evidence and its reasonable inferences in the light most favorable to the nonmovant. Great Am., 391 S.W.2d at 47.

> In deciding whether there is a material fact issue precluding summary judgment, all conflicts in the evidence will be disregarded and the evidence favorable to the nonmovant will be accepted as true. Harwell v. State Farm Mut. Auto Ins. Co., 896

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error one and three disposes of this appeal, we have no need to address

S.W.2d 170, 173 (Tex. 1995); Montgomery v. Kennedy, 669 S.W.2d 309, 311 (Tex. 1984). Evidence that favors the movant's position will not be considered unless it is uncontroverted. Great Am., 391 S.W.2d at 47.

Qualified immunity is a substantive right belonging to police officers. Schultea v. Wood, 47 F.3d 1427, 1430 (5th Cir. 1995). Police officers are immune if they could have reasonably believed their actions to be lawful in light of clearly established law and the information the officers possessed. Hunter v. Bryant, 502 U.S. 224, 228, 112 S. Ct. 534, 537, 116 L.Ed.2d 589, 595-96 (1991). Even if law enforcement officials err, they are entitled to qualified immunity if their decision was reasonable. Lampkin v. City of Nacogdoches, 7 F.3d 430, 435 (5th Cir. 1993), cert. denied, 114 S. Ct. 1400 (1994).

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point of error two.

In determining whether an officer has crossed the constitutional line in the use of force, attention is focused on the severity of the subject crime, whether the suspect posed an immediate threat to the safety of the officer, and whether the suspect was actively resisting arrest. Graham v. Connor, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L.Ed.2d 443, 445 (1989). These determinations must be made without the luxury of hindsight:

> We must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes "reasonable" action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

Stroik v. Ponseti, 35 F.3d 155, 158-59 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 1692 (1995) (citing Smith v. Freland, 954 F.2d 343, 347 (6th Cir.), *cert denied*, 504 U.S. 915 (1992)).

Although the test for qualified immunity under state law is whether the officer was acting in good faith,

Chambers, 883 S.W.2d at 655-56, the test under federal law is one of objective reasonableness:

> Although the cases sometimes refer to the doctrine of qualified "good faith" immunity, the test is one of objective legal reasonableness, without regard to whether the government official involved acted with subjective good faith.
>
> ' We look to whether a reasonable official could have believed his or her conduct to be lawful in light of clearly established law and the information possessed by the official at the time the conduct occurred.' Thus, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'

Swint v. City of Wadley, 5 F.3d 1435, 1441-42 (11th Cir. 1993) (citations omitted), cert. denied, 115 S. Ct. 1312 (1995).

Carlisle concedes in his brief that the parties agree Robinett was acting within his discretion and within the scope of his official capacity. He contends, however, that the summary judgment failed to establish his "objective good faith based on objective legal reasonableness."[3]

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[3] Carlisle's use of the "good faith" test implies a reliance upon state law, and in fact the authority he relies upon is state, rather than federal, case law. Although we now evaluate the evidence under the federal, rather than state, qualified immunity standard (as discussed in point of error

Carlisle argues that the affidavit used to obtain the search warrant indicates that the marijuana police sought was more likely to be found at 1409 Fulton Street (located directly behind 2142 Avenue E) rather than the address listed in the search warrant and the address where Carlisle was at the time of the shooting. Carlisle asserts that the affidavit is "bare bones" and "so lacking in *indicia* of probable cause as to render official belief in its existence entirely unreasonable." Carlisle also maintains that the officers used excessive force to enter the residence because they broke down the door before being refused admission after giving notice of their authority and purpose. In effect, Carlisle argues that because Robinett's initial entry into the residence was illegal, Carlisle was justified in using deadly force to protect himself, and the officer was not officially immune from firing in return.

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one), the summary judgment proof provided by both parties is still clearly relevant.

Robinett recited in his affidavit that he believed he had probable cause to enter the residence at 2142 Avenue E and entered pursuant to a search warrant. Whether the affidavit was sufficient to support the search warrant is an issue separate from the objective reasonableness of Robinett's entry once the warrant had been issued. Robinett stated that the warrant was executed shortly after 12:15 a.m. and that it was extremely quiet outside at that time of night.[4] Although Carlisle contends that the officers broke down the door "before being refused admission after giving notice of their authority and purpose, "Robinett testified that police officer Al Chapa "yelled 'Police, search warrant'" as the door was struck.[5] Officer Chapa's shout

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[4] Robinett's testimony from Carlisle's criminal trial was attached to Carlisle's response to the motion for summary judgment and is heavily relied upon by Carlisle in this appeal.

[5] Carlisle contends that the "custom implemented by the City of Wichita Falls is for officers to break down the door upon their arrival" and relies upon the testimony of a police officer at Carlisle's criminal trial. When asked why police used battering rams, the officer responded as follows:

> As with most places that I've had dealings with where illegal drugs are dealt, the people in there are afraid that the police are going to catch them, and they constantly make plans on how to keep from being caught. One of them being using lookouts. One of them being grab the stash and flush it if you see the police coming. And time is of the essence to not only

was, Robinett estimated, loud enough to be heard within a one block area. Robinett also said that the door was hit with a battering ram nearly a dozen times and that it was difficult to enter the house because the ram punched a hole in the door before the lock gave way. Robinett said that the noise "Practically shook the house." Upon entry, Robinett saw Carlisle. It was only after Carlisle refused Robinett's order to get onto the floor and pointed the gun at the officer's chest that Robinett fired his weapon.

Wichita Falls Police Chief Curtis Harrelson testified that, based upon his 37 years' experience as an officer, Robinett acted within the "acceptable, reasonable, and

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> obtain the evidence, but it's also important to us on some places to use the element of surprise in order to safeguard the officers and the evidence that would be there.

The officer then stated that the police didn't "just go up and knock on the door" to prevent the destruction of evidence and to safeguard themselves.

The United States Supreme Court has held that the common law "knock and announce" principle forms part of the reasonableness inquiry. See Wilson v. Arkansas, ___ U.S. ___, 115 S. Ct. 1914, 131 L.Ed.2d 976 (1995). Given that Robinett had been warned that the occupants of the house could pose a serious danger to police officers and that the officers feared destruction of the evidence, the policy described by Wichita Falls police officials and followed by Robinett in this instance was objectively reasonable.

lawful parameters of proper police training and conduct." We conclude that it was objectively reasonable for Robinett to assume that the occupants of the house were sufficiently apprised of his identity and purpose for entry given the loudness of the police officer's announcement and the length of time that it took the officers to enter the building. Although Carlisle told investigators that he had been sleeping, was awakened when the door came "flying open," and grabbed his pistol in self-defense upon seeing silhouettes, this, also, has no bearing on the objective legal reasonableness of Robinett's actions. As a result, point of error three is sustained.

The order of the trial court is reversed and we render summary judgment for Robinett based upon his qualified immunity.

WILLIAM BRIGHAM
JUSTICE

June 27, 1996

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 (512) 463-1312

December 13, 1996

Holly Crampton
1300 Kemp Boulevard
Wichita Falls, TX 76309

Mr. W. Andrew Messer
Office of City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, TX 76307

RE: Case Number 96-0954
Style: DOUGLAS NELSON CARLISLE
v.
LARRY ROBINETT

Dear Counsel:

Today, the "Supreme Court of Texas denied the above referenced application for writ of error with the notation "Writ Denied".

Sincerely,

John T. Adams, Clerk

by_____
Michael Kopp, Deputy

APPENDIX C

SEARCH WARRANT

JP1-1003555

THE STATE OF TEXAS

COUNTY OF WICHITA

To The Sheriff Or Any Peace Officer Of Wichita County, Texas, or any Peace Officer of the State of Texas, GREETING:

WHEREAS, the Affiant whose name appears on the attached Affidavit is a Peace Officer under the laws of the State of Texas and did heretofore this day subscribe and swear to said Affidavit before me (which said Affidavit is here now made part hereof for all purposes), and whereas I find that the verified facts stated by Affiant in said Affidavit show that Affiant has probable cause for the belief expressed therein and establish existence of proper grounds for issuance of this warrant:

NOW, THEREFORE, you are commanded to enter the suspected place described in said Affidavit and to there search for the personal property described in said Affidavit and to seize same and to arrest and bring before me each suspected party named in said Affidavit.

Further, you are ORDERED, pursuant to provisions of Article 18.10, Texas Code of Criminal Procedure, to retain custody of any property seized pursuant to this Warrant, until further order of this Court or any other court of appropriate jurisdiction shall otherwise direct the manner of safekeeping of said property. This Court grants you leave and authority to remove such seized property from this county, if and only if such removal is necessary for the safekeeping of such seized property by you, or if such

removal is otherwise authorized by the provisions of Article 18.10, T.C.C.P. You are furthered ORDERED to give notice to this Court, as a part of the inventory to be filed subsequent to the execution of this Warrant, and as required by Article 18.10, T.C.C.P., of the place where the property seized hereunder is kept, stored and held.

HEREIN FAIL NOT, but have you then and there this Warrant within three days, exclusive of the day of issuance and exclusive of the day of its execution with your return thereon, showing how you have executed the same, filed in this Court.

ISSUED AT 11:30 P.M., on this the 28 day of January, 1993, A.D., to certify which witness my hand this day.

Janice R. Sons
MAGISTRATE, Wichita County, Texas

AFFIDAVIT

STATE OF TEXAS

COUNTY OF WICHITA

The undersigned Affiant, being a Peace Officer under the laws of the State of Texas and being duly sworn, on oath makes the following statements and accusations:

1. There is in Wichita County, Texas, a suspected place described and located as follows:

A tan single story frame house with brown trim at 2142 Avenue E. The house has the address on the front and the house is trimmed in brown. The house is on the north side of the street and faces south.

2. Said suspected place is in charge of and controlled by each of the following named parties (hereafter called "suspected party" whether one or more) to wit:

A male suspect known to Affiant only as Travis.

3. It is the belief of Affiant, and Affiant hereby charges and accuses that said suspected party has possession of and is concealing at said suspected place in violation of the laws of the State of Texas the following described personal property, to wit: a controlled substance, to wit, marijuana.

4. AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO WIT:
On 01-27-93 a confidential informant, who for

reasons of security shall remain unnamed, went to 2142 Ave E to purchase marijuana. The informant sent another person in to the house. The other person went in and gave the money supplied by the informant to a person known as Travis. Travis told the other person that he had to get the marijuana from "Three Fingered Marvin". Affiant knows "Three Fingered Marvin" to be Marvin Wayne Adams. Travis left 2142 Ave E and yelled out the back door to 1409 Fulton. This is directly behind 2142 Ave E. Both houses are painted the same color tan with brown trim. The informant saw Travis go to 1409 Fulton and then back to 2142 Ave E. As soon as Travis returned to 2142 Ave E, the person the informant sent in for the marijuana came back out and gave the marijuana to the informant. This person explained to the informant that Travis is in care and control of both 2142 Ave E and 1409 Fulton and that Travis allows Adams to live on Fulton in exchange for Adams holding most of the marijuana. Again on 01-28-93 Affiant sent the informant back to the same house.

Again, the informant gave money to the same other person to go in and buy marijuana. The other person went in and gave the money to Travis and the informant saw Travis go out the back door of 2142 Ave E and go into 1409 Fulton. The informant saw Travis leave after a short time and go back to 2142 Ave E. As soon as Travis returned the other person came back out and gave the marijuana to the informant. The other person said Travis always had marijuana and to come back any time. Affiant has received information in the past that this going on at this address. Officer Al Chapa has also received this information. Officer Bob Talley has received

information in the past that this was going on at this address. Affiant has observed traffic consistent with marijuana dealing at this address. Affiant personally knows Marvin Adams and is aware of Adams' involvement in illegal drugs. Adams has been arrested for drug offenses in the past. The informant has proven to Affiant the ability to recognize marijuana and the way it is packaged and sold. The informant is responsible for several felony arrests including but not limited to marijuana offenses. The informant has made these buys and observations within the last twenty four (24) hours.
Affiant believes Travis is in possession of marijuana at 2142 Ave. E and believes he will find marijuana there.

WHEREFORE, Your Affiant asks for the issuance of a warrant that will authorize the search of said suspected place and for said personal property and seizure of the same and for the arrest of each said suspected party, and to take custody of all seized property and safekeep such property as provided by statute.

signed by Greg Burt
Affiant

Subscribed and sworn to before me by the said Affiant on this 28th day of January, 1993 A.D.

signed by Janice R. Sons
MAGISTRATE, Wichita County, Texas